Supreme Court, U.S.
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NO.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

MARIA ELENA TREVINO,

Petitioner,

v.

DIANA LEEDS AND METROPOLITAN LIFE INSURANCE COMPANY,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Bruce D. Viles
Wood, Burney Cohn & Viles, L.L.P.
802 North Carancahua,
Suite 1100
Corpus Christi, Texas 78470
(512) 887-9300 Telephone
(512) 887-9312 Telefax

Attorney for Petitioner, Maria Elena Trevino

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(512) 887-9312 Telefax

Attorney for Petitioner, Maria Elena Trevino

QUESTIONS PRESENTED

1. Whether federal law relating to a change of beneficiary of a Federal Employees' Group Life Insurance policy preempts Texas community property law in the case of an incompetent insured.

2. Whether under *Cipollone v. Liggett Group, Inc.*, 505 U.S. ____, 120 L.Ed.2d 407 (1992), § 8709(d)(1) of the Federal Employees' Group Life Insurance Act ("FEGLIA"), expressly preempting "State law limiting the *amount* of insurance which may be provided under a group contract" (H.R. Rep. No. 96-1280, 96th Cong., 2nd Sess., Section Analysis, p.p. 6-7), limits the preemptive scope of FEGLIA so as not to preempt the application of Texas community property law pertaining to changes of beneficiaries of insureds who become incompetent.

3. Whether the absence in FEGLIA of an anti-attachment or anti-vesting provision, the "fraud" exception to federal preemption, the intent of the insured, principles of unjust enrichment, and other factors present in this case preclude preemption of state community property laws which authorized the wife of the incompetent FEGLIA insured to change the insured's designated beneficiary from his ex-mistress to herself.*

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* All of the parties in the United States Court of Appeals for the Fifth Circuit and in the district court are listed in the caption.

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PETITION FOR WRIT OF CERTIORARI

Petitioner herein respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit entered in this action on April 14, 1994.

OPINIONS BELOW

The opinion of the court of appeals (App. A-1-8) is unreported. The order and opinion of the district court (App. C-1-10) also is unreported.

BASIS FOR JURISDICTION

The judgment of the court of appeals was entered on April 14, 1994. A timely petition for rehearing was denied on May 13, 1994. (App. B) This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

The Supremacy Clause of the Constitution provides in pertinent part as follows (Art. VI, Cl. 2):

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Relevant portions of the Federal Employees' Group Life Insurance Act and Regulations (5 U.S.C. §§ 8701 - 8716; 5 C.F.R. §§ 870.101 - 873.203) and provisions of the Texas Constitution, Family Code and Probate Code are reproduced in Appendices G and H.

STATEMENT OF THE CASE

This case concerns the rights of FEGLIA insureds who become incompetent and whether reference properly may be made to applicable state law to fill the deficiency left in such instances by the federal statute's failure to anticipate and provide for the incompetency of an insured under the FEGLIA group policy.

Antonio Trevino, a federal employee at the Corpus Christi Army Depot, married Petitioner, Maria Elena Trevino, in 1968. They had six children. (R. Vol. 2, p. 390) In 1980,

Antonio Trevino began a sexual relationship with Respondent, Diana Leeds, a younger woman who also was employed at the Army Depot. (R. Vol. 6, p.p. 15-16, 48, 60) Leeds and Trevino agreed to live together and they moved into an apartment in Corpus Christi. Their illicit relationship continued until December 1987 when Leeds tired of the relationship and asked Trevino to leave. (R. Vol. 6, p. 42, p.p. 46-49)

While Leeds and Trevino were living together, Trevino executed and filed a Designation of Beneficiary form naming Leeds as the beneficiary of one hundred percent of his death benefits under the FEGLI policy. (R. Vol. 6, Ex. 6) The insurance policy under which Antonio Trevino had coverage was issued by Metropolitan Life Insurance Company ("Metropolitan") pursuant to FEGLIA, 5 U.S.C. §§ 8701-8716.

After Leeds terminated the affair, Antonio Trevino returned home to resume a normal relationship with his wife and family. (App. A-3) He continued to work at the Army Depot. On various occasions thereafter, he spoke of retirement and of changing the beneficiary of his life insurance policy. (App. A-3; R. Vol. 2, p.p. 392-93) He told his wife and two of his daughters that he planned to change his insurance beneficiary just shortly before he suffered a series of incapacitating strokes and was unable to do so. (App. A-3; R. Vol. 2, p.p. 411-15)

Subsequently, Antonio Trevino was judicially declared mentally incompetent by a Texas probate court. Petitioner was duly appointed as the guardian of his person and estate. (App. A-3) Acting under the authority of § 157 of the Texas Probate Code as "community survivor" of her marital partnership, Petitioner then executed a new FEGLI Designation of Beneficiary form designating herself as beneficiary. (App. A-3-4) It is uncontested that -- aside from

Petitioner's authority to act to change the beneficiary -- the form was properly witnessed and filed.

Antonio Trevino died in 1991. Both Mrs. Trevino and Diana Leeds, his ex-mistress, claimed the proceeds of the FEGLIA benefits. Metropolitan ultimately interpleaded the benefits and filed a motion for summary judgment in federal district court asking for an adjudication that Leeds was the lawful beneficiary of the insurance benefits. (App. A-4-5) The district court had jurisdiction under 28 U.S.C. § 1332, § 1335 and § 1441. Additionally, the district court found that it had jurisdiction under 28 U.S.C. § 1333. (R. Vol. 5, No. 21)

Metropolitan's principal argument was that FEGLIA's "order of precedence" provision (5 U.S.C. § 8705 (a); App. G-1) places the "beneficiary . . . designated by the employee" first in line to receive the insurance, and inflexibly mandates that Leeds receive the insurance benefits, regardless of whatever facts or circumstances might exist, and regardless of the effect which Texas law might have. Metropolitan also argued that § 8709(d)(1) of FEGLIA preempted Mrs. Trevino's claim to the insurance proceeds and, that to have been valid, the redesignation of beneficiary filed after the insured became incompetent must have been *personally signed* by Antonio Trevino. (R. Vol. 2, No. 53)[1]

The district court agreed with Metropolitan's preemption analysis. It granted Metropolitan's motion for summary judgment and awarded the insurance proceeds to Leeds. (App. C-1-10)

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[1] At page 15 of its memorandum in support of its motion for summary judgment, Metropolitan argued, "A designation [of beneficiary] executed by someone other than the employee is not in compliance with the FEGLI policy and its authorizing statutes and regulations." (R. Vol. 2, No. 53, p. 15)

The court of appeals essentially rejected Metropolitan's sweeping preemption arguments. Although agreeing with Metropolitan that conflicting state law cannot override an employee's ability to designate a beneficiary in a FEGLIA policy, the court of appeals declared that "looking to state law to determine what constitutes an employee designation *on behalf of an incompetent* does not necessarily present such a conflict." (App. A-10; emphasis in original.)

Observing that both a general guardianship section of the Texas Probate Code (§ 390(c), now § 857(h)) and the community survivorship section of the Probate Code (§ 157, now § 883) authorized a change of the beneficiary of an incompetent insured, the former section *with* court approval, and the latter section *without* court approval, the court of appeals held, on authority of *Ridgway v. Ridgway*, 454 U.S. 46 (1981), that only the general guardianship section of the Probate Code was available to Mrs. Trevino.

Because Mrs. Trevino had relied on § 157, rather than on § 390(c), and lacked "court authorization," the court of appeals held that Texas law did not support the changed designation of beneficiary. (App. A-6-8) The basis of the court's holding was that, under *Ridgway*, Texas' community property laws are preempted by FEGLIA and the policy at issue thus was not community property.

REASONS FOR GRANTING THE WRIT

The Court should grant the petition for certiorari in this case because, as the holdings of the courts below illustrate, existing precedents of this Court are not yet sufficiently clear so as to avoid unintended encroachments on state laws. Nor are they sufficiently clear so as to preclude routine preemption of salutary state laws and common law rules which, rather than "directly conflicting with" or doing "major damage" to "clear and substantial federal interests," instead serve to provide rules of law to fill gaps and

deficiencies in federal enactments under circumstances or in situations not envisioned or provided for by Congress.

The issues presented are of broad national significance as 2.6 million federal employees are insured under FEGLIA alone, with some $118 billion of insurance in force. (R. Vol. 1, No. 29, Ex. "B") All of these employees and their beneficiaries are potentially deprived, under the reasoning and holdings of the courts below, of the application of significant bodies of state statutory and common law in circumstances not foreseen or provided for in FEGLIA, and which may "furnish convenient solutions in no way inconsistent with adequate protection of federal interest[s]." *See United States v. Kimbell Foods, Inc.*, 440 U.S. 715, 729 (1979), quoting from *United States v. Standard Oil Co.*, 332 U.S. 301 (1947).[2]

The principal issue presented in this case is not only likely to recur, it is also likely to repeatedly be resolved incorrectly without further guidance from this Court.

This case further presents a major issue of federalism in that the courts below have easily found preemption in the areas of family law and property law, heretofore recognized "as matters of peculiarly local concern and therefore governed by state and not federal law," *In re Burris*, 136 U.S. 586, 593-594 (1890); *United States v. Yazell*, 382 U.S. 341, 349, 353 (1966), in the absence of any indication that Congress has "positively required by direct enactment" that state law be preempted, *Hisquierdo v. Hisquierdo*, 439 U.S. 572, 581

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[2] This case presents directly a question as to the applicability of state law to resolve issues arising from the insured's incompetence, a circumstance wholly unaddressed in FEGLIA. However, other broad, but unprovided for categories of issues arising from beneficiary designations under FEGLIA, and for which state common law or statutes may provide convenient solutions, include fraud, duress, undue influence, mistake, and situations in which the beneficiary wrongfully brings about the death of the insured. *See Couch on Insurance 2nd (rev. ed.)* §§ 28:100-28:107.

(1979), or that preemption is necessary to forestall "major damage" to "clear and substantial" federal interests. *Id.* at 581-582.

This case also presents an opportunity for the Court to prevent multiple injustices affecting the rights of FEGLIA's millions of insured employees and their beneficiaries arising from the misreading by the district court in this case, and by other district courts and federal courts of appeals, of § 8709(d)(1) of FEGLIA, an express preemption provision, which, when read in light of its legislative history, under *Cipollone v. Liggett Group, Inc.*, 505 U.S._____, 120 L.Ed.2d 407 (1992), *limits* rather than *expands* federal preemption of state law under FEGLIA.[3]

In this latter regard, the Section Analysis of H.R. Rep. No. 96-1280, 96th Cong., 2nd Sess., discussed *infra*, reporting on the 1980 FEGLIA amendments which added § 8709(d)(1), plainly reflects Congress' intent only to preempt state laws "limiting the *amount* of insurance which may be provided under a group contract to citizens of the State." (App. F-1-3; emphasis added.)

I. THE HOLDING OF THE COURT OF APPEALS IS CONTRARY TO THE PRECEDENTS OF THIS COURT AND PRODUCES AN ANOMALOUS RESULT

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[3] In this case (App. C-8), in *Metropolitan Life Ins. Co. v. Christ*, 979 F.2d 575 (7th Cir. 1992), *Mounts v. U.S.*, 838 F.Supp. 1187 (E.D. Ky. 1993), *Metropolitan Life Ins. Co. v. Browning*, 839 F.Supp. 1508 (W.D. Ok. 1993), *Lewkowicz v. Lewkowicz*, 761 F.Supp. 48 (E.D. Mich. 1991), and in *Mercier v. Mercier*, 721 F.Supp. 1124 (D.N.D. 1989), the courts misinterpreted § 8709(d)(1) as being broadly preemptive of state law. *Cf. Mall v. Atlantic Financial Federal*, 127 F.R.D. 107, 109 - 110 (W.D. Pa. 1989) (rejecting Metropolitan's argument that FEGLIA completely preempted state laws and noting: "Metropolitan's reading of the language of section 8709(d)(1) is somewhat strained.").

WHICH COULD NOT HAVE BEEN INTENDED BY CONGRESS.

In *Mansell v. Mansell*, 490 U.S. 581 (1989), this Court observed, "Because domestic relations are preeminently matters of state law, we have consistently recognized that Congress, when it passes general legislation, rarely intends to displace state law in this area. (citation omitted) Thus we have held that we will not find preemption absent evidence that it is 'positively required by direct enactment.'" *Id.* citing, *inter alia*, *Hisquierdo v. Hisquierdo*, 439 U.S. 572, 581 (1979).

Both family law and property law have been recognized as matters of peculiarly local concern and therefore governed by state and not federal law. *See In re Burris*, 136 U.S. 586, 593-94 (1890); *United States v. Yazell*, 382 U.S. 341, 349, 353 (1966). In *McCarty v. McCarty*, 453 U.S. 210 (1981), Chief Justice Rehnquist observed that "the authority of the States should not be displaced except pursuant to the clearest directive from Congress." *Id.* at 237-238 (noting also that in only five previous cases had this Court found preemption of community property law) (Rehnquist, J., joined by Brennan and Stewart, JJ., dissenting).

In *Hisquierdo*, the Court declared that "State family and family-property law must do 'major damage' to 'clear and substantial' federal interests before the Supremacy Clause will demand that state law be overridden."[4] There is thus a clear "presum[ption] that Congress did not intend to preempt areas of traditional state regulation." *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 740 (1985).

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[4] In this regard, the Court pointed out that "a mere conflict in words is not sufficient" to support preemption of state family or family-property law. *Id.*, 439 U.S. at 581.

Moreover, the Court in *Hisquierdo* pointed out that the "federal nature" of benefits does not "by itself proscribe the entire field of state control." Instead, the Court stated, "the pertinent questions are whether the right as asserted conflicts with the express terms of federal law and whether its consequences sufficiently injure the objectives of the federal program to require nonrecognition." *Id.* at 583.[5]

The Court has also stated, "In the interest of avoiding *unintended encroachment* on the authority of the states . . . a court interpreting a federal statute pertaining to a subject traditionally governed by state law will be reluctant to find preemption. Thus, preemption will not lie unless it is 'the clear and manifest purpose of Congress.'" *CSX Transportation, Inc. v. Easterwood*, 457 U.S. _____, 123 L.Ed. 2d 387, 396 (1993) (emphasis added).

In *United States v. Bass*, 404 U.S. 336 (1971), the Court established a requirement that to find preemption in an area of traditional state concern it must be clear that Congress actually considered the issue and meant to preempt state law:

> [U]nless Congress conveys its purpose clearly, it will not be deemed to have significantly changed the federal-state balance.*** In traditionally sensitive areas, such as legislation affecting the federal balance, the requirement of clear statement assures that the legislature has in fact faced, and intended to bring into issue, the critical matters involved in the judicial decision.

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[5] In *Hisquierdo*, the Court also declared: "Insofar as marriage is within temporal control, the States lay on the guiding hand. The whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States." *Id.* at 581.

Id. at 349. The "ultimate touchstone" in any preemption analysis is the purpose of Congress in enacting the federal statute. *Fort Hallifax Packing Co. v. Coyne*, 482 U.S. 1, 8 (1987).

In *De Sylva v. Ballentine*, 351 U.S. 570 (1956), the Court considered the question of whether an illegitimate child was included within the meaning of "children of the author" as used in the Copyright Act. In the course of its opinion, the Court declared:

> The scope of a federal right is, of course, a federal question, but that does not mean that its content is not to be determined by state, rather than federal law. (citations omitted) This is especially true where the statute deals with a familial relationship; there is no federal law of domestic relations, which is primarily a matter of state concern.

Id. at p. 580.

In determining whether the child in *De Sylva* had been legally adopted, and came within the term "children" as used in § 24 of the Act, the Court noted that a reference to state law was required. The Court then stated: "We think it proper, therefore, to draw on the ready-made body of state law to define the word 'children' in § 24." *Id.* at 580-81.

In this case, the insured clearly indicated his intent to change the beneficiary of his insurance to his wife. He was prevented from doing so personally by his intervening incompetency. FEGLIA does not address this situation nor does *Ridgway*. However, the laws of Texas contain at least two provisions which may be looked to as a remedy for the deficiency in the federal act.

Section 390 of the Texas Probate Code (Vernon 1980) (App H-4)[6] at relevant times authorized the guardian of an incompetent to modify a policy of life insurance owned by the ward *provided that a court order authorizing the modification was obtained.*[7]

Section 157 of the Texas Probate Code (Vernon 1980) (App. H-3), as construed in *Salvato v. Volunteer State Life Ins. Co.*, 424 S.W.2d 1 (Tex.Civ.App.--Houston [1st Dist.] 1968, no writ), authorized Petitioner, acting in the capacity of the surviving partner of the community estate of herself and Antonio Trevino, to change the life insurance beneficiary previously designated by him. That authority arose immediately upon the adjudication of Antonio Trevino's incompetency and required *no court order* to be effective. *Id.* at 4.[8]

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[6] Section 390 has no judicial construction indicating whether, in view of § 157, cited and discussed *infra*, it applies to community property or only to the separate property of a ward.

[7] In addition, unless preempted by FEGLIA, a statutory durable power of attorney under Texas law would also be a vehicle by which an incompetent FEGLI insured's beneficiary designation could be changed. *See Texas Probate Code §§ 490, 491, 498* (Vernon Supp. 1994).

[8] The pleadings, summary judgment evidence and legal memoranda filed by Petitioner in the courts below demonstrated that, in the absence of federal preemption, the insurance covering the life of Antonio Trevino was community property under Texas law, with community ownership extending both to the policy and to the future right to receive the proceeds of the policy. *See, e.g., Amason v. Franklin Ins. Co.*, 428 F.2d 1144 (5th Cir. 1970) ("[E]ach spouse owned an undivided one-half interest in the policy and the future right to receive its proceeds."). Aside from whatever may be the effect of § 8705 and § 8709(d)(1) and the FEGLIA regulations, no party has questioned, or produced any evidence suggesting, that the policy otherwise was not the community property of Petitioner and her now deceased husband.

The question of whether state law may be applied to *supplement* federal life insurance beneficiary provisions in cases involving incompetent insureds has arisen previously and has been answered affirmatively in the context of insurance under the former National Service Life Insurance Act (38 U.S.C. § 801 *et. seq.*). The latter Act, like FEGLIA, specifically provided that the insured had the right to designate and to change the beneficiary. Additionally, it included an unqualified directive to pay the proceeds to the properly designated beneficiary. Like FEGLIA, the NSLIA contained no provision addressing changes of beneficiaries of incompetent insureds.

Thus, in *Murray v. U.S.*, 107 F.Supp 290 (E.D. Mich.) *aff'd*, 188 F.2d 362 (6th Cir.), *cert. denied*, 342 U.S. 816 (1951), the court held that the guardian of a mentally incompetent veteran had the right to change the insured's beneficiary when acting pursuant to state law. That result was reached despite the fact that under the NSLIA the right to change the beneficiary was not directly conferred upon anybody else but the insured. *Id.* at 293.

The court in *Murray* observed that it was dealing with "a unique situation not specifically covered or anticipated by either the law as written or the regulations as promulgated." *Id.* In upholding the validity of the change of beneficiary, the court in *Murray* declared:

> This court is not prohibited from following the law of the State of Michigan if that law does not seek to usurp powers of the federal government. Furthermore, there is no usurpation here. *The National Service Life Insurance Act . . . is deficient and such deficiency may be corrected by the state law.****

> We hold, therefore, that the beneficiary selected by the guardian shall receive the proceeds from the National Service Life Insurance policy of the veteran because *when the guardian acted by order of the Probate Court this had the same legal effect as though the insured himself had made the new designation.*

Id. at 294 (emphasis added).

Likewise, in *Roecker v. U.S.*, 379 F.2d 400 (5th Cir.), *cert. denied*, 389 U.S. 1005 (1967), the guardian of a non compos mentis insured under a NSLI policy, acting pursuant to a state probate court order, executed a change of the designated beneficiary under the policy.[9] The court of appeals in *Roecker* held that the change in beneficiary made by the insured's guardian was valid:

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[9] The applicable NSLI statute governing changes of beneficiaries provided:

> (a) The insured shall have the right to designate the beneficiary or beneficiaries . . . and shall, subject to regulations, at all times have the right to change the beneficiary or beneficiaries of such insurance without consent of such beneficiary or beneficiaries. [38 U.S.C. § 717]

The regulations provided:

> The insured shall have the right at any time, and without the knowledge or consent of the beneficiary to cancel the beneficiary designation, or to change the beneficiary. *** A change of beneficiary to be effective must be made by notice in writing *signed by the insured* and forwarded to the Veterans' Administration by the insured or his agent, and must contain sufficient information to identify the insured. *** 38 C.F.R. § 8.47 (1966) (emphasis added).

Mrs. Roecker argues that since the insured did not personally sign the notice of change, the change was invalid and should be given no effect. Her argument is without merit. The purpose of the statute was to confer on the insured plenary power to change the beneficiary of his policy. (citation omitted) But the law does not provide for the eventuality that the veteran insured would become incompetent. We read the word "competent" into the Act. *Although the language of the regulation, read literally, requires the insured to sign the request for change of beneficiary, Congress and the VA surely did not mean to bind the United States to every whim of a lunatic.* When it declared that the insured was to have the absolute right to change the beneficiary, Congress operated "against the background * * * of [the] basic principle" in our jurisprudence that an incompetent may not validly dispose of his property. (citation omitted) Since it is evident, at least to this Court, that Congress did not intend such an anomalous result, we need not follow the strict language of the regulation. (*Id.* at 404; emphasis added.)

* * * * *

To apply state law to this question does not offend congressional policy. Here there is no overpowering reason in favor of a uniform rule of nationwide application. In fact to apply a federal standard would unnecessarily complicate the duties of guardians, who would have to adhere to one standard when dealing with most of a veteran's affairs, but to another when dealing with his government insurance

> policies. *United States v. Murray*, E.D. Mich. 1950, 107 F.Supp. 290 . . . dealt with the propriety of a guardian's redesignation of the beneficiary of an incompetent veteran's NSLI policy. The court decided to apply state law. We think it was correct, and that Mississippi law should govern this case. (*Id.* at 405-06)

Despite its well-reasoned and directly-on-point opinion in *Roecker*, the court of appeals in this case apparently felt compelled by *Ridgway* to preempt the community property laws of Texas, including § 157 of the Texas Probate Code upon which Petitioner relied. The court of appeals inconsistently held that § 157 was inapplicable, but that § 390 could, and apparently should, have been utilized to effectuate the change. (App. A-6-8) However, nothing in *Ridgway* justifies or requires a differentiation between the two sections of the probate code. Applying applicable principles of federal preemption, either FEGLIA preempted both statutes or it preempted neither of them.

Ridgway is in fact not on point and it furnishes no guidance in resolving the issue of the validity of Petitioner's change of her husband's designation of his ex-mistress as his beneficiary.

In this connection, *Ridgway* did not involve an incompetent insured and it did not involve community property. Instead, *Ridgway* involved a state court divorce judgment ordering a serviceman insured under a Servicemen's Group Life Insurance Act ("SGLIA") policy to keep his insurance policies in force for the benefit of the divorcing couple's three children. The Court found that the divorce judgment conflicted with SGLIA's unqualified directive to pay the proceeds to the insured's properly designated beneficiary, his second wife, and that the Supremacy Clause forbade the

imposition of a constructive trust upon the proceeds of the insurance after the serviceman's death.

In addition to not being on point factually with this case, *Ridgway* and the statute upon which it was based are legally distinguishable. Aside from the "order of precedence" and "designation or change of beneficiary" provisions of SGLIA, which are similar but not identical to those under FEGLIA (*see* 454 U.S. at 52-53),[10] the pivotal underpinnings of *Ridgway* were (1) SGLIA's very strong anti-attachment provision in 38 U.S.C. § 770(a) shielding payments from "taxation" and from "claims of creditors" and stating that payments "shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatsoever, either before or after receipt by the beneficiary," and (2) enhancement of the "morale" of the serviceman which the

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[10] The SGLI regulations considered in *Ridgway* provided that a designation of beneficiary "will take effect only if it is in writing, *signed by the insured*, and received [by the appropriate office] prior to the death of the insured." *Id.* at 53 (emphasis added).

In contrast, the FEGLI statute merely speaks in terms of a "signed and witnessed writing received before death in the employing office . . . ." 5 U.S.C. § 8705(a) (App. G-1). The FEGLI regulations state only that a beneficiary designation "shall be in writing, signed, and witnessed by two people," etc. 5 C.F.R. § 870.902(a) (App. G-1).

There is no requirement in the FEGLI statute or regulation that the writings referred to must be "*personally* signed *by the employee*" to be effective. Neither the statute and regulations nor the FEGLIA policy contain any words which literally would preclude an insured from designating a beneficiary through a power of attorney or, as in this case, bar a change by his duly-authorized spouse acting as the surviving manager of the community property under Texas law.

Court saw as a legitimate end "within the powers of national defense." *Id.* at 52-53, 56-57.[11]

The majority in *Ridgway* held that the result reached was controlled by the Court's earlier opinion in *Wissner v. Wissner*, 338 U.S. 655 (1950), another case involving a NSLI policy. *Ridgway*, 454 U.S. at 55. In *Wissner*, the serviceman had named his parents as beneficiaries. Upon his death, his widow claimed community property rights in the policy proceeds.

Relying upon the very strong anti-attachment provision in the NSLIA[12] and its "right to designate beneficiary" provision, which "might well directly enhance the morale of the serviceman," a majority of the Court in *Wissner* determined that the widow's community interest in the proceeds of the policy was preempted. 338 U.S. at 660.

However, *Wissner* also did not involve an incompetent insured. Moreover, in contrast to the statutes considered in both *Ridgway* and *Wissner*, FEGLIA contains *no anti-attachment provision* of any sort.[13] FEGLIA also contains

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[11] Despite the additional and differing provisions of SGLIA, and the argument about fostering morale in the military, two Justices of this Court have characterized the holding in *Ridgway* as "hopeless anomalous" and deserving of being relegated to the status of "a derelict on the waters of the law." *See Rose v. Rose*, 481 U.S. 619, 639 (1987) (O'Connor, J., concurring joined by Stevens, J.).

[12] The NSLIA as construed in *Wissner* also contained an anti-vesting provision which is quoted in part in the Court's opinion. The Court held that the anti-vesting provision forestalled the wife's assertion that under California law she had a vested community property right in the proceeds of the policy. *See* 338 U.S. at 661.

[13] In *Hisquierdo*, the Court noted what it characterized as "a most important role" played by the anti-attachment provision in the Railroad

(continued...)

no anti-vesting provision. There is nothing in FEGLIA to protect the specified beneficiary against attachments by creditors, levies, seizures, or other legal or equitable processes.

The conspicuous absence of any type of anti-attachment or anti-vesting provision in FEGLIA is an especially significant indicator that Congress did not intend the Act to preempt state laws, such as the community property laws of the State of Texas. Even more certainly, Congress could not have intended to preclude the application of state law which merely supplies a remedy for a deficiency in FEGLIA and which, in this case, would serve to effectuate the insured's intent and prevent an unjust windfall in favor of his ex-mistress.

In his dissenting opinion in *Ridgway*, Justice Stevens observed that when Congress enacted SGLIA, it removed previous limitations requiring that designated beneficiaries be only immediate family members and dependents. He pointed out that giving absolute and unqualified priority to the insured's designated beneficiaries would allow "a loan shark, a camp follower, or a total stranger" who might be designated as beneficiary priority over the claims of dependent family members. *Id.* 454 U.S. at 81.

In this case, because of the absence of an anti-attachment provision in FEGLIA, preemption grants a lawful wife's legitimate and vested community property interests under state law no recognition whatever, while leaving a FEGLIA insured's beneficiary designation subject to nullification at the will of an ordinary creditor. Congress

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[13](...continued)
Retirement Act which, citing *Wissner*, the Court observed was like anti-attachment provisions generally in that "it ensures that the benefits actually reach the beneficiary." *Id.* 439 U.S. at 583-84.

clearly did not intend such a result and the provisions of the statute just as clearly do not require such a result.[14]

II. FEGLIA'S EXPRESS PREEMPTION PROVISION COMPELS THE CONCLUSION THAT CONGRESS DID NOT INTEND TO PREEMPT THE COMMUNITY PROPERTY LAWS OF TEXAS.

In *Cipollone v. Liggett Group, Inc.*, 505 U.S. _____, 120 L.Ed.2d 407 (1992), the Court held that the preemptive scope of both the Federal Cigarette Labeling and Advertising Act of 1965 and its successor, the Public Health Cigarette Smoking Act of 1969, which amended the 1965 Act, is governed entirely by the express preemptive language in § 5 of each Act.

Because the congressional history of FEGLIA, as amended, indicates an intent to effect only a *limited* preemption of state law, the Court's following analysis in *Cipollone* is of singular importance in this case:

> When Congress has considered the issue of pre-emption and has included in enacted

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[14] The Court has stated that the relative importance to a state of its own law is not material when there is a conflict with a valid federal law. *Ridgway*, 454 U.S. at 54. Nonetheless, the court of appeal's opinion in this case is particularly aberrational in that it would uphold a court authorized change of the insured's designated beneficiary under an ordinary guardianship statute ("Maria needed to obtain court approval for the action that she took in changing the beneficiary") (App. A-7-8), while at the same time brushing aside the state's community property laws. Previously, the court of appeals in *Wyly v. Commissioner*, 610 F.2d 1282, 1287-88 (5th Cir. 1980), recognized Texas' community property regime as rooted in "the fundamental law of Texas, its Constitution" and that the basic elements of Texas marital property law *occupy a position above that of state statutes. Id.*

> legislation a provision *explicitly* addressing that issue, and when that provision provides a "reliable indicium of congressional intent with respect to state authority" (citation omitted) "there is no need to infer congressional intent to pre-empt state laws from the substantive provisions" of the legislation. (citation omitted) Such reasoning is a variant of the familiar principle of expressio unius est exclusio alterius: *Congress' enactment of a provision defining the preemptive reach of a statute implies that matters beyond that reach are not preempted.*

Id., 120 L.Ed. 2d at 423 (emphasis added).

Subsequent cases in the federal courts of appeals applying *Cipollone* have recognized that the inclusion in a statute of an express preemptive provision excludes "consideration of all forms of implied preemption, including conflict preemption." *See Cleveland v. Piper Aircraft Corp*, 985 F.2d 1438, 1447 (10th Cir.), *cert. denied*, 126 L.Ed. 2d 240 (1993), in which the court of appeals concluded that this was made explicit by Justice Blackmun's concurring opinion in *Cipollone*, which it quoted as follows: "We resort to principles of implied preemption -- that is, inquiring whether Congress has occupied a particular field with the intent to supplant state law *or whether state law actually conflicts with federal law* -- only when Congress has been silent with respect to preemption." 985 F.2d at 1447. *See also Mendes v. Medtronic, Inc.*, 18 F.3d 13, 16 (1st Cir. 1994); *American Agric. Movement v. Board of Trade*, 977 F.2d 1147, 1154 (7th Cir. 1992).

In *Myrick v. Freuhauf Corp*, 13 F.3d 1516 (11th Cir. 1994), the court of appeals characterized an express preemption provision as being "the alpha and omega of

preemption analysis." *Id.* at 1525. Regarding the "reliable indicium" language in *Cipollone*, the court in *Myrick* stated that *Cipollone* established "a presumption that a preemption clause is a reliable indicium of congressional intent." *Id.*

In considering a question of preemption under the National Traffic and Motor Vehicle Safety Act, the court in *Myrick* also held that the legislative history of the Act, which included a House Committee Report describing the congressional intent about preemption, demonstrated that the Act's preemption provisions was "a reliable indicium of congressional intent." *Id.* at 1525-26.[15]

In *Draper v. Chiapuzio*, 9 F.3d 1391 (9th Cir. 1993), the court held that an Oregon statute requiring a one-year tort claim notice was not inconsistent with the federal Emergency Medical Treatment and Active Labor Act because the state statute "simply addresses a concern that the [federal] Act does not." Following *Cipollone*, the court of appeals quoted the federal Act's express preemption provision and stated that it would "construe its preemptive effect as narrowly as possible." *Id.* at 1393.

Yet another post-*Cipollone* court of appeals opinion, *Public Health Trust v. Lake Aircraft*, 992 F.2d 291 (11th Cir. 1993), involved consideration of a statute which originally contained no express preemption provision but which, like FEGLIA, was amended to include an express preemption section. The court of appeals, following *Cipollone*, restricted preemption under the Act in accordance with the amended statute's express preemption section.

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[15] *Myrick* also held that a statutory delegation of rule-making power to a federal agency did not prevent the statute's preemptive clause from being "intended as a sole expression of pre-emption." *Id.* at 1526.

In this case, Metropolitan has argued that § 8709(d)(1) of FEGLIA (App. F-3), as added by the 1980 amendments to FEGLIA, has a broad preemptive effect. Metropolitan contended in the district court that the preemptive sweep of § 8709(d)(1) is even broader than preemption of state law under § 514 of the Employee Retirement Income Security Act of 1974 ("ERISA") (29 U.S.C. § 1144) because FEGLIA, unlike ERISA, contains no savings clause.[16]

However, in *Metropolitan Life Ins. Co. v. Christ*, 979 F.2d 575 (7th Cir. 1992),[17] and in other cases upon which Metropolitan has relied, the courts apparently had before them

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[16] Metropolitan's argument overlooks the fact that § 8709(d)(1) contains two restrictive qualifiers not found in § 514 of ERISA:

> (d)(1) The provisions of any contract under this chapter *which relate to the nature or extent of coverage or benefits (including payments with respect to benefits)* shall supersede and preempt any law of any State or political subdivision thereof, or any regulation issued thereunder, *which relates to group life insurance to the extent that the law or regulation is inconsistent with the contractual provisions.* (Emphasis added.)

If Congress had intended the meaning advanced by Metropolitan, it could have simply omitted the emphasized language.

[17] Without considering the effect of *Cipollone*, the court in *Christ* overruled an earlier opinion in *Rollins v. Metropolitan Life Ins. Co.*, 863 F.2d 1346 (7th Cir. 1988). Although the *Christ* opinion is inapposite here, Petitioner submits that the court in *Rollins* was correct when it originally found significant differences between FEGLIA and SGLIA. For example, in *Rollins* the Seventh Circuit pointed out that "FEGLIA has the character of private insurance," that "the impetus of FEGLIA is to provide low cost life insurance protection *for the federal civilian employee's family*," and that when President Eisenhower proposed the program to Congress "he likened it to the group insurance programs provided to employees by private employers." *Id.* at 1351 (emphasis added). The *Rollins* court concluded that FEGLIA was "best viewed as the public service analog to private group insurance." *Id.* at 1352.

only the limited congressional history (H.R. Rep. No. 96-1280, 96th Cong., 2nd Sess.) of the 1980 amendments which is reprinted in 1980 U.S. Code Cong. & Admin. News 3867-71.

Significantly, the Section Analysis of the 1980 amendments to FEGLIA is entirely omitted from the portions of H.R. Rep. No. 96-1280 as reprinted in the U.S. Code Congressional & Administrative News. The Section Analysis, under the heading "Preemption of State or local law," plainly states the *limited* purpose of § 8709(d)(1):

> The provision for preemption of State and local group life insurance law is deemed advisable to eliminate all possibility of a conflict between section 7 and 8 of this bill, increasing levels of optional group life insurance available to employees, *and any provision of State law limiting the amount of insurance which may be provided under a group insurance contract to citizens of the State*. H.R. Rep. 96-1280, Section Analysis, p.p. 6-7. (App. F-2; emphasis added.)[18]

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[18] The language of § 8709(d)(1) was essentially borrowed from 5 U.S.C. § 8902(m)(1), the express preemption section of the Federal Employee Health Benefits Act ("FEHBA") as added in 1978. However, the legislative history of the 1978 FEHBA amendments makes clear that they also were intended to effect only "a form of limited preemption." *See* 1978 U.S. Code Cong. and Admin. News 1413-20. Congress was concerned by the fact that, for example, by law some states required health plans to pay for chiropractic services, but in other states chiropractic services were not required to be covered. *Id.*

FEHBA would obviously be impacted adversely if the corporate health insurers under that plan were submitted to varying state law requirements with respect to matters such as covered illnesses, private duty nursing care, substance abuse treatment, eligible health care providers, and

(continued...)

The fact that Congress deemed it advisable to include § 8709(d)(1) among its 1980 amendments to FEGLIA, and its stated purpose in doing so, indicate that (1) state law was not already clearly and broadly preempted, (2) the preemption provision was limited to its stated purpose, and (3) Congress did not intend thereby to preempt state laws pertaining to domestic relations and family law such as § 157 of the Texas Probate Code. Because § 8709(d)(1) merely preempts state laws limiting the *amount* of insurance made available to federal employees under FEGLIA, *Cipollone* restricts any broader preemptive application of FEGLIA.

III. TAKEN TOGETHER, THE CIRCUMSTANCES OF THIS CASE PRECLUDE PREEMPTION OF THE TEXAS COMMUNITY PROPERTY LAWS WHICH AUTHORIZED PETITIONER TO CHANGE THE INSURED'S DESIGNATED BENEFICIARY FROM HIS EX-MISTRESS TO HERSELF.

Viewed especially in the light of FEGLIA's express preemption section, the presumptions identified above, and the absence in the statute in this case of any anti-attachment or anti-vesting provision, there is no compelling basis for granting an absolute, unqualified, and immutable priority for Antonio Trevino's 1982 designation of Leeds as his beneficiary.

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[18](...continued)
the like. In contrast, although § 8709(d)(1) is worded similarly, H.R. Rep. No. 96-1280 demonstrates that Congress thereby only intended to preempt state laws which might, for example, limit group life insurance coverage to $50,000, or some similar amount that was less than the increased amounts of insurance Congress provided for in the 1980 FEGLIA amendments.

Unless corrected by this Court, the metamorphosis which would occur under the lower courts' rulings in this case, of Petitioner's vested interest in community property into property in which Petitioner has no interest whatever, would amount to a taking from her without compensation, contrary to the Fifth Amendment of the Constitution. Yet no compelling reason exists why Petitioner's community property should be taken away from her and given to a person with whom her husband had been having an illicit relationship.

The court of appeals suggested that Petitioner should have obtained court approval to change the beneficiary. Undoubtedly, had her lawyer at the time anticipated the court's extraordinary ruling, that is precisely what he would have done. Just as certainly, an application for an order authorizing the change of beneficiary could not have been opposed successfully by Leeds. Leeds was not the insured's wife. She was not related to him at all. She was his ex-mistress, but had ended the affair herself years before. She also admittedly had changed the beneficiary of her own FEGLI policy, in which she had named Antonio Trevino as beneficiary, to someone else.

In short, Diana Leeds would have had no legal, moral or equitable basis upon which to oppose the issuance of an order by the probate court acting under state law authorizing the beneficiary change. Moreover, the undisputed evidence establishes that the insured desired and intended to make the change. It is also undisputed that he became incompetent on the very day he intended to make the change.

Undoubtedly, the probate court would have regarded these circumstances as compelling reasons to authorize the change, rather than allowing Leeds to reap a "windfall" at the expense of the insured's wife and family. However, under the court of appeals' opinion, § 390 of the Probate Code is elevated over § 157 of the same code, and all of these

circumstances and the wishes and expressed intentions of the incompetent insured are given no consideration.

Even the *Ridgway* Court left room for possible exceptions involving "extreme fact situations" or where the beneficiary would receive the proceeds through fraudulent or illegal means. *See also Yiatchos v. Yiatchos*, 376 U.S. 306 (1964) (recognizing that federal law is not to be used as a shield for fraud or to prevent relief for a breach of trust by a husband while acting in his capacity as manager of the general community property). In this case, there would clearly be a windfall and unjust enrichment of the ex-mistress. Moreover, a fraud on the wife's vested community property interests under state law would be carried out by effectuating only § 390 of the Probate Code, but not § 157.

The unjust enrichment consideration cannot be lightly dismissed in this case. The Court in *Ridgway*, after taking note that the case was "unpalatable," observed that the second wife to whom it was awarding the insurance proceeds "was, after all, the insured's lawful wife at the time of his death." *Ridgway* at n. 12. The majority of the Court in *Ridgway* found no allegation of fraud in the complaint or amended complaint of the former spouse.

In contrast, Petitioner expressly relied in the courts below on the "fraud on the wife" doctrine which is applicable under Texas law to gifts made to third persons out of property which is community property under state law. However, when such gifts are made to beneficiaries who are related to the disposing spouse or decedent, as was the case in *Ridgway* and *Wissner*, the doctrine is relaxed or may not even apply. *See Estate of Korzekwa v. Prudential Ins. Co.*, 669 S.W.2d 775, 778-79 (Tex.App.--San Antonio 1984, writ dismissed); *Jackson v. Smith*, 703 S.W.2d 791, 795-96 (Tex.App.--Dallas 1985, no writ).

On the other hand, Texas law is specific and emphatic regarding gifts of community property to mistresses and similar unrelated parties. *See Roberson v. Roberson*, 420 S.W.2d 495 (Tex.Civ.App.--Houston [14th Dist.] 1967, writ ref'd n.r.e.), quoting as follows from *Watson v. Harris*, 130 S.W. 237 (Tex.Civ.App. 1910, no writ), about "knowingly, excessive and capricious" gifts to a mistress:

> It is so repugnant to our sense of justice that this court will never sanction the proposition that a husband may desert his lawful wife, and while living in adultery with another woman, donate to the latter as a gift his wife's interest in the property owned by them in common, unless the Legislature enacts a law which will admit of no other construction.

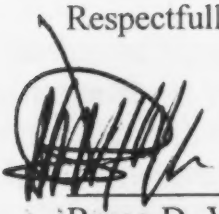
Id., 420 S.W.2d at 502.

The legislative history of FEGLIA reflects a concern for families, as does the Texas law pertaining to gifts of community property to unrelated third parties. In instances, however, where a such a gift is made to a third person who is related to the insured, and especially when adequate provision has otherwise been made for the insured's spouse or widow, the gift stands. Surely, the application of these rules, and community property law in general, do not meet the relevant tests set out by this Court so as to require preemption of Texas law in this case.

CONCLUSION

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted,



Bruce D. Viles
WOOD, BURNEY, COHN & VILES, L.L.P.
802 North Carancahua
Suite 1100
Corpus Christi, Texas 78470
(512) 887-9300 Telephone
(512) 887-9312 Telecopier
State Bar No. 20581000

Attorney for Petitioner,
Maria Elena Trevino

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

U.S. Court of Appeals
FILED
APR 14, 1994

Charles R. Fulbruge III, Clerk

No. 93-7451

METROPOLITAN LIFE INSURANCE CO.,
Plaintiff-Appellee,
versus

MARIA E. TREVINO, ET AL.,
Defendants,
MARIA E. TREVINO,
Defendant-Appellant.

****

MARIA ELENA TREVINO,
Plaintiff-Appellant,
versus
DIANA LEEDS and METROPOLITAN LIFE INSURANCE CO.,
Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Texas
(CA-C91-89 c/w C-91-177)

Before REAVLEY, GARWOOD and HIGGINBOTHAM,

Circuit Judges.

REAVLEY, Circuit Judge:*

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*Local Rule 47.5 provides: "The publication of opinions that have no

During his life Antonio Trevino designated a friend, Diana Leeds, as beneficiary of his Federal Employees Group Life Insurance ("FEGLI") policy. His widow, Maria appeals from summary judgment denying proceeds of the policy to her even though she designated herself beneficiary while acting as Antonio's guardian. We affirm.

BACKGROUND

Maria Trevino ("Maria") is the widow of Antonio Trevino ("Antonio"), a former federal employee who was insured under a Federal Employees Group Life Insurance ("FEGLI") policy, underwritten by Metropolitan Life Insurance Company ("Met Life"). Implementation of the policy is

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precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

governed by the Federal Employees' Group Life Insurance Act, 5 U.S.C. §§ 8701 et seq.

The Trevinos were married in 1968. While still married to Maria, Antonio moved in with appellee Diana Leeds ("Leeds") and executed a designation of beneficiary form in favor of Leeds under his FEGLI policy.

In 1987 Leed's relationship with Antonio ended, and he returned home to resume a normal relationship with his wife and family. According to two of Antonio's daughters and his wife, Antonio planned to change the beneficiary of the insurance policy, but he suffered a series of incapacitating strokes and was unable to do so.

In 1990, Antonio was judicially declared mentally incompetent and Maria was legally appointed the guardian of Antonio's "person and estate" by the Texas probate court. Maria then executed a new FEGLI

designation of beneficiary form and listed herself as beneficiary. The form was witnessed by two people, and was received by Antonio's place of employment with proof of the guardianship on March 19, 1990. On March 23, 1990, the United States Office of Personnel Management ("OPM") rejected Maria's designation, stating that "a designation of beneficiary completed and signed by an individual other than the employee/annuitant is not acceptable."

After Antonio died in 1991, both Leeds and Maria claimed that they were entitled to the benefits. Maria filed suit in state court against Leeds and Met Life, while Met Life filed a complaint for interpleader and declaratory judgment in federal court and subsequently removed the state suit. Met Life deposited the benefits into the registry of the Court and filed a motion for summary judgment arguing that Leeds, the last beneficiary designated by Antonio,

was entitled to the FEGLI benefits.

Met Life relied on the language of 5 U.S.C. § 8705(a), which states that benefits will be paid "[f]irst, to the beneficiary . . . designed by the employee in a signed and witnessed writing received before death in the employing office. . . For this purpose, a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed has no force or effect . . ." The district court granted Met Life's motion for summary judgment and awarded the proceeds to Leeds. Maria appeals.

DISCUSSION

Met Life argues on appeal that even if Maria could have validly changed the designation of the beneficiary under Texas law, her claim is preempted by federal law. Met Life points out that under Ridgway v. Ridgway, 102 S. Ct. 49 (1981) and Wissner v. Wissner, 70 S. Ct. 398 (1950), the

Supreme Court has mandated that state law must give way to clearly conflicting federal enactments in upholding an insured service member's right to freely designate a beneficiary in federal employee insurance policies.

Although we agree with Met Life that conflicting state law cannot override an employee's ability to designate a beneficiary in a FEGLI policy, looking to state law to determine what constitutes an employee designation on behalf of an incompetent does not necessarily present such a conflict. See Roecker v. United States, 379 F.2d 400 (5th Cir. 1967), cert. denied, 88 S. Ct. 563 (1967). But regardless of the preemption issue, under Texas law Maria could not change the beneficiary without obtaining specific authorization from the probate court. TEX. PROBATE CODE ANN. § 390(c), amended by TEX. PROBATE CODE ANN. § 857(h) (1993)

(insurance policies or annuity contracts may not be changed or modified during the life of a ward except on application to the court). Where the insurance policy is community property, under Texas law a competent spouse can change the beneficiary designated by the incompetent spouse without court approval. Salvato v. Volunteer State Life Ins. Co., 424 S.W.2d 1, 4 (Tex. Civ. App.--Houston [1st Dist.] 1968, no writ), See also TEX. PROBATE CODE ANN. § 157 (a competent spouse can manage the community estate on behalf of an incompetent spouse without a guardianship). But in the present case, the FEGLI policy at issue was not community property. See Ridgway, 102 S. Ct. at 57 (the asserted interests in SGLIA policy proceeds is not a shared asset subject to the community interests of another).

Maria needed to obtain court approval for the action that she took in changing

the beneficiary. Filing papers with Antonio's employer without specific authority from a competent court to change the beneficiary did not satisfy the requirement of "court authorization" under Texas law. Accord South v. United States, 262 F. Supp. 321, 324 (N.D. Miss. 1966), Murray v. United States, 107 F. Supp 290, 294 (E.D.Mich. 1950), aff'd., 188 F.2d 362 (6th Cir. 1951), cert. denied, 72 S. Ct. 30 (1951). Even if we were to determine that Maria's attempt to change the beneficiary was not blocked by preemption, Texas law does not support the changed designation.

AFFIRMED

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

U.S. Court of Appeals
FILED
May 13, 1994

Charles R. Fulbruge III, Clerk

No. 93-7451

METROPOLITAN LIFE INSURANCE CO.,
Plaintiff-Appellee,
versus

MARIA E. TREVINO, ET AL.,
Defendants,
MARIA E. TREVINO,
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MARIA ELENA TREVINO,
Plaintiff-Appellant,
versus
DIANA LEEDS and METROPOLITAN LIFE INSURANCE CO.,
Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Texas

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ON PETITION FOR REHEARING

(May 13, 1994)

Before REAVLEY, GARWOOD and HIGGINBOTHAM,

Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby denied.

ENTERED FOR THE COURT:

/s/ Thomas M. Reavley
United States Circuit Judge

CLERK'S NOTE:
SEE FRAP AND LOCAL RULES 41 FOR STAY OF THE MANDATE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT
OF TEXAS

Entered

APR 30 1993

Michael N. Milby,
Clerk
By Deputy: /s/
M. Fegan

CORPUS CHRISTI DIVISION

METROPOLITAN LIFE INSURANCE COMPANY

V. C.A. NO. C-91-89

MARIA E. TREVINO AND
DIANA LEEDS

MARIA ELENA TREVINO,

V. C.A. NO C-91-177

DIANA LEEDS AND
METROPOLITAN LIFE INSURANCE
COMPANY (CONSOLIDATED CASES)

ORDER GRANTING METROPOLITAN LIFE'S MOTION FOR SUMMARY JUDGMENT, DENYING TREVINO'S MOTION FOR PARTIAL SUMMARY JUDGMENT, AND GRANTING IN PART AND DENYING IN PART LEEDS' MOTION FOR SUMMARY JUDGMENT

Maria Trevino ("Maria") is the widow

of Antonio Trevino ("Antonio"), a former federal employee insured under a Federal Employees Group life Insurance ("FEGLI") policy, underwritten by Metropolitan Life Insurance Company ("Met Life"). Antonio last designated Diana Leeds ("Diana"), a woman with whom he lived for seven (7) years during his marriage to Maria, as his beneficiary under a FEGLI. In March, 1990, Maria became guardian of her husband Antonio after he returned home and became mentally incompetent. She then executed a designation of beneficiary form in behalf of her husband, naming herself as his beneficiary. At that time, Antonio was physically or mentally capable of executing such a form for himself. Maria's attorney filed that designation with Antonio's employer, attaching Maria's letters of guardianship. After receiving an inquiry from Antonio's employer as to the validity of Maria's designation, Met Life informed

the employer the designation could not be accepted because it was not signed by the insured. The employer informed Maria's attorney of the rejection.

Antonio died on January 4, 1991, and both Diana and Maria claimed benefits under the FEGLI policy. On April 12, 1991, Maria filed her suit in state court against Diana and Met Life, claiming her right to the benefits. After Maria filed her suit but before learning of it, Met Life filed a complaint for interpleader and declaratory judgment in federal court on April 23, 1991. Met Life then removed the state suit on June 28, 1991. The Court denied Maria's motion to remand and consolidated the cases. Met Life deposited the benefits at issue into the registry of the Court on April 11, 1992.

Met Life filed a motion for summary judgment on September 25, 1992, arguing that Diana, the last beneficiary designated

by Antonio, is the only one entitled to the FEGLI benefits. Met Life relies on the language of 5 U.S.C. § 8705(a), which sets forth the manner in which the insured must designate a beneficiary. The language of that section of the Federal Employees Group Life Insurance Act ("FEGLIA") states the employee must designate a beneficiary, do it in writing, and file it.

> The amount of group life insurance and group accidental death insurance in force on an employee at the date of his death shall be paid, on the establishment of a valid claim, to the person or persons surviving at the date of his death, in the following order of precedence:
>
> First, to the beneficiary ... designated by the employee in a signed and witnessed writing received before death in the employing office ... For this purpose, a designation ... of beneficiary in a will or other document not so executed and filed has no force or effect.

5 U.S.C. § 8705(a). In addition, Met Life argues Maria's state law claims against it are preempted. Diana joins in Met Life's

motion.

On October 29, 1992, Maria filed her opposition to Met Life's motion and also filed her own motion for partial summary judgment, arguing she is entitled to the benefits. Maria argues this Court should deviate from the requirements of the statutory language if the insured's intent to change the designation can be proven.

The Court declines to deviate from the clear statutory language. The Office of Personnel Management ("OPM"), the agency charged with administering the statute, has applied the strict interpretation indicated by the statute with consistency. Declaration of David A. Lewis, Paragraph 8 (Exhibit B to Met Life's Motion for Summary Judgment). The Court finds that strict interpretation to be a reasonable interpretation of the statutory language, and Met Life is entitled to rely on it. Further, plaintiff has not furnished to the

Court any case where there was deviation from the requirement that the employee sign and file the designation. Finally, the statute provides explicitly that even a will executed properly under state law, indicating a clear intent to change the designation, does not suffice. The Court fails to see how another document, properly executed under state law, could be treated any differently in light of the statutory language. Because the designation naming Diana is the only one complying with § 8705(a), it is the only valid designation. Diana is entitled to the insurance proceeds. Accordingly, the Court denies Maria's motion for partial summary judgment.

To grant fully Met Life's and Diana's motion for summary judgment the Court must determine whether Maria's state law claims for extra-contract damages are preempted. Contract provisions relating to the "nature

or extent of coverage or benefits (including payments with respect to benefits)" preempt any state law "relat[ing] to group life insurance" that is inconsistent with the contractual provisions. 5 U.S.C. § 8709(d)(1). Section 25 of the contract between Met Life and the government provides in relevant part:

> EXTRA-CONTRACT DAMAGES - In any action at law or in equity, the Beneficiary of record or claimant, as specified in Section 11 hereof, shall be limited in the amount of recovery to the benefit claimed, plus reasonable attorney's fees as set by the court. The term "benefit claimed" is limited to:
>
> (1) the amounts of Life Insurance ... in force hereunder on account of the Employee ... at the date of the Employee's death; and
>
> (2) interest as specified in subsection C of section 4 hereof; and
>
> (3) post-judgment interest at the statutory rate allowed on judgments in the applicable state.

Section 25. This contract provision relates to the payment of benefits. It provides a claimant can recover only the policy benefits in any suit based on a FEGLI policy. Accordingly, state law providing for the recovery of extra-contract damages in such a suit conflicts with that provision. The Court need only determine whether such state law "relates to" group life insurance to determine whether the state law is preempted.

The state claims for damages against Met Life are based on fraud on Maria's community property rights, tortious interference with her expectancy of receiving benefits, and breach of the duty of good faith and fair dealing. These claims all seek to change the party to whom the benefits are paid or the manner in which they are paid. The Court finds they all relate to the group insurance plan. Because all requirements of § 8709(d)(1)

are met, the contract provision prohibiting extra contract damages preempts any state law claim allowing them.

Met Life, as a party to that contract, is entitled to summary judgment on those claims. Accordingly, the Court grants Met Life's motion for summary judgment. Diana, however, is not entitled to summary judgment on the state law claims because she is not a party to the contract. Accordingly, the Court grants Diana's motion for summary judgment only on the issue of her entitlement to the proceeds, but not on Maria's state law claims against Diana.

The Court no longer has federal question jurisdiction nor diversity jurisdiction over the remaining claims. In determining whether to retain supplemental jurisdiction over state law claims, the Court should balance the values of economy, convenience, fairness, federalism, and

comity. Parker & Parsley Petroleum v. Dresser Industries, 972 F.2d 580, 585 (5th Cir. 1992). No single factor is dispositive, and "'in the usual case in which all federal-law claims are eliminated before trial, the balance of factors to be considered ... will point toward declining to exercise jurisdiction over the remaining state-law claims.'" Id. at 586-87 (quoting Carnegie-Mellon Univ v. Cohill, 484 U.S. 343, 350 n. 7, 108 S. Ct. 614, 619 n. 7 (1988)). The Court finds it should not exercise its discretion to retain supplemental jurisdiction. The Court remands Maria's claims against Diana only to the 94th Judicial District Court of Nueces County on the issues of state common law.

ORDERED this 25 day of April, 1993.

/s/ H. W. Head, Jr.
H. W. HEAD, JR.
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT
OF TEXAS

Entered

APR 30 1993

Michael N. Milby,
Clerk
By Deputy: /s/
M. Fegan

CORPUS CHRISTI DIVISION

METROPOLITAN LIFE INSURANCE COMPANY

V. C.A. NO. C-91-89

MARIA E. TREVINO AND
DIANA LEEDS

MARIA ELENA TREVINO,

V. C.A. NO C-91-177

DIANA LEEDS AND
METROPOLITAN LIFE INSURANCE
COMPANY (CONSOLIDATED CASES)

FINAL JUDGMENT

In accordance with its orders on summary judgment motions, the Court grants final judgment in favor of Metropolitan Life Insurance Company and Diana Leeds that

Diana Leeds be awarded benefits under the FEGLI policy on the life of Antonio Trevino, that Maria Trevino be denied benefits under the policy, and that Maria Trevino's claims against Diana Leeds are remanded to the 94th Judicial District Court of Nueces County, Texas, for trial. Costs are awarded to Metropolitan Life Insurance Company and Diana Leeds.

ORDERED this 29 day of April, 1993.

/s/ H. W. Head, Jr.
H. W. HEAD, JR.
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT
OF TEXAS

Entered

CORPUS CHRISTI DIVISION

JUN 07 1993

Michael N. Milby,
Clerk
By Deputy: /s/
M. Fegan

METROPOLITAN LIFE INSURANCE COMPANY,
Plaintiff,

vs. C.A. NO. C-91-89

MARIA E. TREVINO AND
DIANA LEEDS,
Defendants

MARIA ELENA TREVINO,
Plaintiff

vs. C.A. NO C-91-177

DIANA LEEDS AND
METROPOLITAN LIFE
INSURANCE COMPANY, (CONSOLIDATED CASES)
Defendants

ORDER DENYING STAY AND
DENYING RECONSIDERATION

On this day came on to be considered the Motion of Maria Elena Trevino to

Reconsider, Vacate, and, Alternatively, to Grant Other Relief in Connection with Order and Summary Judgment and Motion by Maria Elena Trevino for Stay of Judgment Pursuant to Rule 62(b). The Court, having considered the motions, the responses thereto, and pleadings on file, is of the opinion that said motions are not meritorious and should be denied. It is therefore

ORDERED that the Motion by Maria Elena Trevino to Reconsider, Vacate, and, Alternatively, to Grant Other Relief in Connection with Order and Summary Judgment is hereby DENIED; It is further

ORDERED that the Motion by Maria Elena Trevino for Stay of Judgment Pursuant to Rule 62(b) is hereby DENIED.

SIGNED this 3 day of June, 1993.

/s/ H. W. Head, Jr.
UNITED STATES DISTRICT JUDGE

96TH CONGRESS REPORT
2d Session No. 96-1280

HOUSE OF REPRESENTATIVES

FEDERAL EMPLOYEES' GROUP LIFE INSURANCE ACT OF 1980

September 4, 1980. -- Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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MRS. SPELLMAN, from the Committee on Post Office and Civil Service, submitted the following

REPORT
[To accompany H.R.7666]

The Committee on Post Office and Civil Service, to whom was referred the bill (H.R. 7666) to amend chapter 87 of tit[l]e 5, United States Code, to increase the amounts of regular and optional group life insurance available to Federal employees and provide optional life insurance on family members, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

EXPLANATION OF AMENDMENT

The committee amendment substitutes an entirely new text for the text of the introduced bill. The explanation of the provisions of the committee substitute is contained in the explanation of the bill as set forth below in this report.

PURPOSE

The purpose of H.R. 7666, as amended, is to amend provisions of law relating to the Federal employee's group life insurance (FEGLI) program to increase amounts of regular and optional group life insurance available to Federal employees, to provide optional life insurance on family members, and to revise the reduction in the life insurance of an annuitant.

* * * * *

SECTION ANALYSIS

SECTION 1

Short title

Section 1 of the bill provides that the Act may be cited as the "Federal Employees' Group Life Insurance Act of 1980".

* * * * *

SECTION 5

Preemption of State or local law

Section 5 of the bill amends section 8709 of title 5 by adding a new subsection (d) at the end thereof. The new subsection (d) exempts the Federal Employees' Group Life Insurance Program from any State or local law or regulation pertaining to the nature or extent of group life insurance coverage or benefits to the extent that such law or regulation conflicts with the provisions of any contract made under the FEGLI law. A similar provision was inserted in the Federal Employees Health Benefits law by Public Law 95-368 approved September 17, 1978. The provision for preemption of State and local group life insurance law is deemed advisable to eliminate all possibility of a conflict between section 7 and 8 of this bill, increasing levels of optional group life insurance available to employees, and any provision of

State law limiting the amount of insurance which may be provided under a group insurance contract to citizens of the State.

* * * * *

§ 8709. Insurance policies

* * * * *

(d)(1) The provisions of any contract under this chapter which relate to the nature or extent of coverage or benefits (including payments with respect to benefits) shall supersede and preempt any law of any State or political subdivision thereof, or any regulation issued thereunder, which relates to group life insurance to the extent that such law or regulation is inconsistent with the contractual provisions.

* * * * *

[Remainder of Report Omitted.]

In pertinent part, 5 U.S.C. § 8705 provides:

(a) The amount of group life insurance and group accident death insurance in force on an employee at the date of his death shall be paid, on the establishment of a valid claim, to the person or persons surviving at the date of his death, in the following order of precedence:

> First, to the beneficiary or beneficiaries designated by the employee in a signed and witnessed writing received before death in the employing office *** For this purpose, a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed has no force or effect.

Second, if there is no designated beneficiary: to the widow or widower of the employee.

* * * * *

In pertinent part, 5 C. F. R. § 870.902 provides:

(a) A designation of beneficiary shall be in writing, signed, and witnessed by two people, and be received in the employing office***

* * * * *

(e) A change of beneficiary may be made at any time and without the knowledge or consent of the previous beneficiary. This right cannot be waived or restricted.

* * * * *

In pertinent part, Art. 16, §15 of the Texas Constitution (Vernon 1993) provides:

> **§ 15. Separate and Community Property of Husband and Wife.**
>
> Sec. 15. All property, both real and person, of a spouse owned or claimed before marriage, and that acquired afterward by gift, devise, or descent, shall be the separate property of that spouse; and laws shall be passed more clearly defining the rights of the spouses, in relation to separate and community property * * *.

Section 5.01 of the Texas Family Code (Vernon 1993) provides:

> §5.01. **Marital Property Characterized**
>
> (a) A spouse's separate property consists of:
>
> (1) the property owned or claimed by the spouse before marriage;
>
> (2) the property acquired by the spouse during marriage by gift, devise, or descent; and
>
> (3) the recovery for personal injuries sustained by the spouse during marriage, except any recovery for loss of earning capacity during marriage.
>
> (b) Community property consists of the property, other than separate property,

acquired by either spouse during marriage.

Section 5.02 of the Texas Family Code (Vernon 1993) provides:

§ 5.02. **Presumption**

Property possessed by either spouse during or on dissolution of marriage is presumed to be community property. The degree of proof necessary to establish that property is separate property is clear and convincing evidence.

In Pertinent Part, § 5.22 of the Texas Family Code (Vernon 1993) provides:

§ 5.22. **Community Property; General Rules**

(a) During marriage, each spouse had the sole management, control, and disposition of the community property that he or she would have owned if single, including but not limited to:

(1) personal earnings;

(2) revenue from separate property;

(3) recoveries for personal injuries; and

(4) the increase and mutations of, and the revenue from, all property subject to his or her sole management, control, and disposition.

* * * * * *

(c) Except as provided in Subsection (a) of this section, the community property is subject to the joint management, control, and disposition of the husband and wife, unless the spouses provide otherwise by power of attorney in writing or other agreement.

Section Of the Texas Probate Code (Vernon 1980) provides:

§157. **When Spouse Incompetent**

Whenever a husband or wife is judicially declared to be incompetent, the other spouse, in the capacity of surviving partner of the martial partnership, thereupon acquires full power to manage, control, and dispose of the entire community estate, including the part which the incompetent spouse would legally have power to manage in the absence of such incompetency, and no administration, community or otherwise, shall be necessary. Guardianship of the estate of the incompetent spouse shall not be necessary when the other spouse is competent unless the incompetent spouse owns separate property, and then as to such separate property only. The qualification of a guardian of the estate of an incompetent spouse does not deprive the competent spouse of the right to manage, control, and dispose of the entire community estate as provided in this Code.

(*See now* Texas Probate Code §§ 157 and 883 (Vernon Supp. 1994).)

Section 390 of the Texas Probate Code (Vernon 1980) provides:

§ 390 **Old or Existing Insurance or Annuities**

If a policy of life, term or endowment insurance or a contract of annuity is owned by the ward when a proceeding for the appointment of a guardian is begun, and it is made to appear that the company issuing such policy or contract of annuity is a life insurance company as herein defined, or the policy or contract is administered by the Veterans Administration, it shall be lawful to continue such policy or contract in full force and effect. All future premiums may be paid out of surplus funds of said ward. Provided, however, that the guardian shall apply to the court for an order to continue said policy or contract, or both, according to their existing terms or to modify the same to fit any new developments affecting the welfare of the ward, and provided further, that before any such application is granted the guardian shall file a report in said court showing in detail the financial condition of the estate of the ward at the time the application is filed.

(*See now* Texas Probate Code § 857(h) (Vernon Supp. 1994).)